IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4588 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HANSABEN NATVERLAL KOTHARI

Versus

DY COLLECTOR

Appearance:

1. Special Civil Application No. 4588 of 1999

MR AR THACKER for Petitioner No. 1

MR HM BHAGAT for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 15/12/2004

ORAL JUDGEMENT

#. In this petition filed under Article 226/227 of the Constitution of India, the petitioner has challenged the

legality and validity of the order dated 25.02.1999 passed by the respondent no. 2 - appellate authority in dismissing the same and confirming the order passed by respondent no. 1 - Dy.Collector dated 14.03.1991 by which the document in question is considered as Gift Deed and directed the petitioner to pay the amount of stamp duty.

#. Mr.Narendra Natverlal Kothari, son of the petitioner had got the property in question by share of one Rajkunverben Nihalchand Kothari after obtaining necessary letter of administration certificate from the Civil Court, Rajkot on the death of Natvarlal Nihalchand Kothari. Agreement in question which was considered to be Release Deed came to be executed in favour of the petitioner by which the widow of Natvarlal Nihalchand Kothari and her daughter had released the right in favour of the petitioner. That document came to be executed in the year 1986. The respondent no. 1 was of the opinion that the document in question is not the release deed but it is a gift deed and therefore the petitioner was required to pay the stamp duty considering the same as gift deed in the respective schedule or respective articles. Proceedings were initiated. It is the case of the petitioner that without giving any opportunity, the order came to be passed by respondent no. 1 dated 14.03.1991 treating the document in question as gift deed and directed the petitioner to pay the amount of Rs.33,400/- and further amount of Rs.33,400/- by way of penalty, in all Rs.66,800/-. Being aggrieved and dissatisfied with the same, the petitioner preferred appeal before the respondent no. 2 which came to be dismissed by respondent no. 2 by order dated 25.02.1999 confirming the order passed by respondent no. 1. Being aggrieved and dissatisfied with both the aforesaid orders, the petitioner has preferred the present petition under Article 226/227 of the Constitution of India.

#. Mr.A.R.Thakker learned advocate appearing for the petitioner has submitted that both the authorities below have materially erred in treating the document in question as gift deed instead of release deed. He submitted that considering the provisions of Hindu Succession Act, the petitioner being mother has share in the property in question. This property of her son along with widow and the minor daughter and therefore when the widow and minor daughter have released their share, it is required to be considered as release deed and it cannot be treated as gift deed and therefore requested to allow the present petition.

#. No affidavit-in-reply is filed on behalf of the respondents. It is specifically mentioned in the petition that the impugned order came to be passed by respondent no. 1 dated 14.03.1991 without giving opportunity to the petitioner. It appears that the respondent no. 1 has also not considered the provisions of Hindu Succession Act. Considering the provisions of Hindu Succession Act, prima facie it can be said that the petitioner as the mother is having share in the property of her son along with widow as well as the daughter/son of the deceased and the widow and the daughter have released their share. The aforesaid aspect has not been considered by the respondent while passing the impugned order in view of the fact that impugned order dated 14.03.1991 is passed without giving opportunity to the petitioner. The present petition is required to be allowed only on that ground without entering into the larger question whether the document in question can be considered to be release deed and/or gift deed and the matter is required to be remanded to the respondent no. 1 for passing a fresh order on its own merits and in accordance with law after giving opportunity to the petitioner.

#. For the reasons stated above, order dated 14.3.1991 passed by respondent No.1 as well as order passed by respondent NO.2 dated 25.2.1999 are hereby quashed and set aside. The matter is remanded to respondent No.1 for passing a fresh order on merits and in accordance with law after giving opportunity of hearing to the petitioner. It will be open for the petitioner to take all the contentions which are available to him inclusive of the provisions of Hindu Succession Act.

#. In view of the above, this petition is allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.R.Shah,J)

(pathan)

STARTORDER

SCA